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FISCAL IMPACT REPORT

ORIGINAL DATE 2/08/07
 LAST UPDATED 3/16/07 HB _____

SPONSOR Robinson

SHORT TITLE Repeal Certain Eminent Domain Statutes SB 401/aHJC/aCC

ANALYST Propst

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 393
 Relates to HB 370, HJR 1 and SJR 3

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Office of the Attorney General (OAG)

SUMMARY

Synopsis of Conference Committee Amendment

The Conference Committee amendment strikes Section 1, inserted by the House Judiciary Committee, and inserts in its place a new Section 1 that allows a municipality the power of condemnation of private property for public use for the purpose of:

1. laying out, opening or widening streets, alleys and highways or their approaches
2. constructing storm drains or garbage and refuse disposal areas and plants

The new Section 1 also provides that a municipality may acquire by eminent domain any property within the municipality for:

1. park purposes
2. to establish cemeteries or mausoleums or to acquire existing cemeteries or mausoleums
3. to correct obsolete or impractical planning and platting of subdivisions. Obsolete or impractical planning and platting is defined as having been platted prior to 1971, has

remained vacant and unimproved and threatens the health, safety and welfare of person or property due to erosion, flooding, and inadequate drainage.

Section C provides that condemnation proceeding pursuant to this section shall be in the manner provided by law.

Synopsis of House Judiciary Committee Amendment

The amendment inserts a new Section 1 that allows a municipality the power of condemnation of private property for public use for the purpose of;

3. laying out, opening or widening streets, alleys and highways or their approaches
4. constructing storm drains or garbage and refuse disposal areas and plants

The new Section 1 also provides that a municipality may acquire by eminent domain any property within the municipality for:

4. park purposes
5. to establish cemeteries or mausoleums or to acquire existing cemeteries or mausoleums
6. to correct obsolete or impractical planning and platting of subdivisions. Obsolete or impractical planning and platting is defined as having been platted prior to 1975, has remained vacant and unimproved and threatens the health, safety and welfare of person or property due to erosion, uncontrolled flooding, lack of planned or existing roads or topography that is unsuitable for the building of safe structures

Section C provides that condemnation proceeding pursuant to this section shall be in the manner provided by law.

Synopsis of Original Bill

Senate Bill 401 repeals the ability of a municipality to condemn property for economic development purposes under the Metropolitan Redevelopment Act. The bill further repeals the Urban Development and the Community Development Acts.

SIGNIFICANT ISSUES

The bill derives from the recommendations of the 2006 Governor's Task Force on the Responsible Use of Eminent Domain by State and Local Governments and is on the governor's call. The Eminent Domain Task Force examined "the Kelo case to determine what impact the decision will have or has had on condemnation proceedings around the state in order to develop recommendations, including any legislative proposals..."

The Task Force found that "First, governments in New Mexico have rarely used eminent domain for economic development purposes. Second, Rio Rancho turned to eminent domain primarily to resolve inadequate and antiquated platting, which resulted from the unique nature of Rio Rancho's development. Finally, there is evidence that the Metropolitan Redevelopment Act is a useful tool for local governments even without the power of eminent domain."

The Task Force determined that the Urban Development Code, the Community Development

Code and the Metropolitan Redevelopment Code are redundant and unanimously agreed to recommend elimination of the Urban and Community Development Codes. This bill does so. The Task Force also recommended in a 10-7 vote that Section 11 be removed from the Metropolitan Redevelopment Code; that is the part of the law that currently allows the use of eminent domain for economic development purposes in a municipality's attempts to reduce or eliminate slum or blighted conditions.

Presumably this bill is in response to the United States Supreme Court decision in *Kelo v. City of New London*, 545 U.S. 469 (2005). On July 23, 2005 the Supreme Court, by a 5-4 decision, allowed the City of New London, Connecticut to exercise its power of eminent domain to condemn privately owned real estate so it could be used as part of a comprehensive redevelopment plan. The decision was based upon the city's desire to address its economic downturn by allowing the New London Development Corporation, a private entity under the control of the city government, to revitalize the "Fort Trumbull" neighborhood after Pfizer Pharmaceuticals began to build a large research facility on the outskirts of that neighborhood. The corporation offered to purchase the properties involved, but the owners of 15 out of 115 lots refused to sell. The City exercised its power of eminent domain and condemned the holdout lots. The Supreme Court upheld the City's action.

ADMINISTRATIVE IMPLICATIONS

According to testimony presented to the Task Force, Rio Rancho is the only governmental entity to use the power of eminent domain as permitted in the Metropolitan Redevelopment Act. Rio Rancho implemented the Metropolitan Redevelopment Act to address various inadequacies with lot layout that resulted from large scale platting activity in the 1960s.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR 1 and SJR 3 propose to amend the New Mexico Constitution to prohibit the use of the power of eminent domain for private purposes or for economic development. House Bill 159 would also prohibit the exercise of the power of eminent domain for private purposes by enacting the "Private Property Rights Protection Act".

HB 393 is a duplicate of Senate Bill 401.

OTHER SUBSTANTIVE ISSUES

According to the report of the Eminent Domain Task Force, the Metropolitan Redevelopment Act (MRA) "allows local governments to rehabilitate areas within communities that have fallen into disrepair or become overridden by crime and violence. Local governments are able to invest public resources in projects like roads, buildings, parks, and other structures and facilities that promote economic stability and opportunity. The Legislature has expressly given local governments the ability to exercise the power of eminent domain. No other laws in New Mexico allow eminent domain to be used solely for the promotion of economic development."

The Task Force report further notes that in order for a municipality to declare a Metropolitan Redevelopment Area, "the first phase requires the passage of a resolution by a local governmental body declaring that a proposed area is a slum or blighted and that remedying the slum or blight is in 'the interest of the public health, safety, morals or welfare of the residents of the municipality.'" If slum/blight conditions exist, then the local governmental body may

designate that area as a redevelopment area. The designation occurs through a formal vote of the local governmental body. If an area is not declared a slum or blighted area, it may not be designated as a redevelopment area and the powers of the Metropolitan Redevelopment Act may not be invoked. (And) the local governmental body must provide notice to the community of its intent to (1) hold a slum/blight hearing and (2) declare the slum/blighted area a redevelopment area. If a local governmental body declares an area a redevelopment area by formal resolution, it may then adopt a redevelopment plan." Thus the process under existing law for exercising the MRA powers, including the use of eminent domain, is fairly explicit. Exercising eminent domain under the MRA, that is, acquiring "property through purchase or condemnation (that) may be sold or leased to private parties for a use, (must be) consistent with the redevelopment plan."

WEP/mt